



**ASSOCIATION OF BAY AREA GOVERNMENTS
101 EIGHTH STREET , OAKLAND**

**INFORMATIONAL MEETING
RHNA (4TH REVISION) - SUBREGIONS**

**JUNE 16, 2006 - 10 A.M. TO NOON
ROOM 171**

AGENDA

- | | | |
|----|--|-------|
| 1. | Call to order | 10:00 |
| 2. | Introductions | 10:05 |
| 3. | Overview
Staff presentation on RHNA statutory requirements and conditions imposed by HCD letter granting extension of time for RHNA | 10:15 |
| 4. | Formation of subregions
Staff presentation on who, how and when. Attendees' feedback on status of subregional efforts. | 10:30 |
| | Break | 11:00 |
| 5. | Coordination among ABAG and subregions
Staff presentation on where the ABAG and subregional RHNA processes intersect and status report on ABAG's data survey and development of an allocation methodology. Attendees' feedback and questions. | 11:10 |
| 6. | Delegation Agreement
Staff presentation on a draft template for statutorily required delegation agreement. Attendees' feedback and questions. | 11:45 |

W o r k i n g D r a f t

DELEGATION AGREEMENT

The following local governments [LIST] that have/will form a “subregion” (Subregion) as described in Government Code Section 65584.03 (all subsequent references to the Government Code will be “Govt C.”) and the Association of Bay Area Governments (ABAG) which is the “council of governments” for the San Francisco Bay area as described in Govt C. Section 65582(b) enter into this agreement based on the following common understanding:

- A. The Housing Element Law (Govt C. Sections 65580 – 65589.8, inclusive) provides for a regional housing need allocation process (RHNA) described in Govt C. Sections 65584 – 65584.06, inclusive.
- B. For the fourth revision of RHNA, Govt C. Section 65584.03 provides that certain combination of local governments may form a subregion to perform RHNA for themselves (SubRHNA).
- C. The State Department of Housing and Community Development (HCD) granted ABAG and the region an extension of time to perform RHNA and SubRHNA under the terms and conditions stated in a letter attached as Exhibit A (HCD Letter).
- D. The statute and the HCD letter:
 - (1) have explicit directions to ABAG and the Subregion on how to conduct RHNA and SubRHNA;
 - (2) explicitly describe some of the discretion granted ABAG and the Subregion in choosing processes and outcomes for RHNA and SubRHNA;
 - (3) leave some patent (known) ambiguities as to how RHNA and SubRHNA are to be conducted; and
 - (4) may also leave some latent (unknown) ambiguities.

ABAG and the Subregion agree to undertake their respective implementation of RHNA and SubRHNA under this Delegation Agreement (Agreement) in the following manner:

- 1. Formation of Subregion.

The Subregion has submitted to ABAG resolutions adopted by the governing bodies of each local government in the subregion authorizing the local government’s participation in the Subregion for the purpose of carrying out SubRHNA. The resolutions have been added to the Record (see section ___ of this Agreement).
- 2. Data Collection and Development

The RHNA Law requires ABAG to conduct a data survey and requires the Subregion to use that data in developing the subregional methodology for allocating the subregional share of the regional housing need among the members of the Subregion. ABAG will provide the Subregion with the data it collects and develops. Subregion acknowledges that ABAG does not have the resources to collect or develop data at the subregional level or at the Subregion’s request.
- 3. Assignment of Subregional Share

HCD is scheduled to release the regional housing need number on March 1, 2007. As soon as practical after receipt of the regional number, but no later than May 1, 2007, ABAG will assign a share of the regional need to the Subregion as described in Govt C. Section 65584.03(c) (Subregional

Share). ABAG will notify the Subregion when it receives the regional need number, describe the number and provide ABAG's best estimate of when it will assign a Subregional Share to the Subregion.

4. Release of Initial Draft Subregional Allocations

(a) The HCD letter requires (1) the Subregion to issue the initial draft subregional allocations before June 30, 2007 and (2) ABAG to review the initial draft subregional allocations "for compliance with Govt. Code Sec. 65584.03(d)".

(b) Unless the parties agree otherwise, ABAG and the Subregion will use the following process in carrying out the responsibilities described in section 4(a) of this Agreement:

(1) No later than thirty (30) days after receipt of the Subregion's initial draft subregional allocations, ABAG will issue a written determination to the Subregion stating whether the initial draft subregional allocation complies with Govt C. Section 65584.03(d).

(2) If the Subregion does not release initial draft subregional allocations by June 30, 2007 or if ABAG determines that the initial draft subregional allocation does not comply with Govt C. Section 65584.03(d), ABAG will issue initial draft regional allocations for each of the local governments that were members of the Subregion (Default Allocations). ABAG will issue Default Allocations no later than [July 1, 2007].

(3) ABAG has not yet determined whether (i) Default Allocations will be made using the same methodology as it will use for RHNA or (ii) whether the Subregional Share will be allocated separately or integrated into the regional housing need. Subregion acknowledges that ABAG has the discretion described in this subsection.

(4) Regardless of how ABAG makes the Default Allocations, members of the Subregion will have the same rights to request revisions and appeal their Default Allocation as other local governments under RHNA, provided, ABAG may use different substantive criteria in assessing requests for revisions or appeals where such differences are commensurate with any differences in the methodology used to make the Default Allocation.

5. Final Allocations

(a) The parties acknowledge that each is required under RHNA or SubRHNA to issue final regional allocations or final subregional allocations. The HCD Letter requires Subregion to (1) conduct the public hearing on the final subregional allocation before ABAG's public hearing on its final regional allocation, but no later than March 2008, and (2) submit the final subregional allocation to ABAG by the end of April 2008 for submission to HCD together with ABAG's final regional allocation. The parties agree to use their best efforts to coordinate their RHNA and SubRHNA to meet these requirements. At a minimum, Subregion agrees to notify ABAG in writing of the date of the public hearing on the final subregional allocations and of the fact that the public hearing did, or did not, occur.

(b) The parties acknowledge that ABAG is required to allocate the Subregional Share among the members of the Subregion (Late Default Allocations) if the Subregion fails to issue a final subregional allocation. Subregion agrees that if it concludes, at any time prior to the end of March 2008, that it will not issue final subregional allocations, it will immediately so notify ABAG in writing.

(c) If the Subregion fails to hold the public hearing on the final subregional allocation before the end of March 2008 or has notified ABAG that it will not issue final subregional allocations, ABAG will issue Late Default Allocations and will include the Late Default Allocations in ABAG's public hearings on the final regional allocations. The parties acknowledge that RHNA does not include a process for local governments to appeal Late Default Allocations.

(d) ABAG has not yet determined whether (i) Late Default Allocations will be made using the same methodology as it will use for RHNA or (ii) whether the Subregional Share will be allocated separately or integrated into the regional housing need. Subregion acknowledges that ABAG has the discretion described in this subsection.

6. Amendments to and Enforcement of this Agreement and Liability

(a) ABAG and the Subregion are each undertaking the responsibility to conduct a State mandated process (RHNA and SubRHNA, respectively) for the benefit of their respective members. This Agreement memorializes what each party understands is the cooperation and coordination needed for each to carry out its RHNA or SubRHNA responsibilities at the time this Agreement is executed. Changes in exigent circumstances or the RHNA Law may cause a party to conclude that this Agreement should be amended. All amendments to this Agreement must be in writing and executed by the original signatories, or their designees.

(b) If the parties cannot agree on changes to this Agreement or if one or both parties believes the other is in breach of this Agreement, the parties agree that none of them will seek any legal or equitable remedy, including, but not limited to specific performance, petition for a writ or direct or consequential damages.

(c) None of the parties to this Agreement assumes any responsibility for the acts or omissions of any other party. None of the parties to this Agreement intends to create any third party beneficiaries of this Agreement.

7. Validity

(a) Each party hereby represents to the other(s) that the signatory to this Agreement has the requisite authority to execute this Agreement on their behalf. The other party(ies) are entitled to rely on such representation regardless of whatever information it may have to the contrary.

(b) The following are the Contact Persons for ABAG and the Subregion with respect to any issues arising out of this Agreement, including but not limited to receipt of notices, the responses to notices or questions or representations regarding the status of ABAG or the Subregion or RHNA or SubRHNA. Each party is entitled to rely on the actions, or inaction, of the Contact Person as though given by ABAG or the Subregion.

ABAG Contact:

Name: _____

Address: _____

City: _____

State/Zip: _____

Telephone: _____

Subregion Contact

Name: _____

Address: _____

City: _____

State/Zip: _____

Telephone: _____

ASSOCIATION OF BAY AREA GOVERNMENTS

SUBREGION

By _____

Henry L. Gardner, Executive Director

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM AND CONTENT:

APPROVED AS TO FORM AND CONTENT:

By _____

Kenneth K. Moy, Legal Counsel

By _____

Name: _____

Title: _____